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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/837,112	04/18/2001	Pierre Philip Barrette	12550-31	8998
33318	7590	11/04/2005	EXAMINER	
DIGEO, INC. 8815 122ND NE KIRKLAND, WA 98033			BUI, KIM T	
			ART UNIT	PAPER NUMBER
			3626	

DATE MAILED: 11/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/837,112

Applicant(s)

BARRETTE ET AL.

Examiner

Kim T. Bui

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 August 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 and 22-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 and 22-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Notice to Applicant

1. This communication is in response to the amendment filed 08/10/2005. Claims 1-20, 22-37 are pending. Claim 21 has been cancelled. Claims 5, 20, 22 have been amended.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-6, 10, 12, 16, 25-29 are rejected under 35 U.S.C. 102(b) as being anticipated by Ballantyne et al (5867821).

(A) Claims 1-4, 6, 10, 12, 16, 25-29 have not been amended and are rejected for the same reasons given in the previous Office Action, dated 04/06/2005, and incorporated herein.

(B) The amendment to claim 5 has not change the scope of the claim nor the manner in which the examiner interpreted the claims and/or applied art rejection. Claim 5 is rejected for the same reasons given in the previous Office Action, dated 04/26/05, and incorporated herein.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 7, 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ballantyne et al. (5867821).

(A) Claims 7, 8 have not been amended. The claims are rejected for the same reasons given in the prior Office Action, dated 04/26/05, and incorporated herein.

6. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ballantyne et al. (5867821) in view of Causey, III et al. (6558320).

(A) Claim 9 has not been amended. The claim is rejected for the same reasons given in the prior Office Action, dated 04/26/05, and incorporated herein.

7. Claims 11,13,18,19, 30, 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ballantyne et al. (5867821) in view of Wolff et al. (5671282).

(A) Claims 11,13,18,19, 30, 31 have not been amended. The claims are rejected for the same reasons given in the prior Office Action, dated 04/26/05, and incorporated herein.

8. Claims 14,15, 32, 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ballantyne et al. (5867821) and Wolff et al. (5671282) as applied to claims 13, and 30 and further in view of Maes et al. (6016476).

(A) Claims 14,15, 32, 33 have not been amended. The claims are rejected for the same reasons given in the prior Office Action, dated 04/26/05, and incorporated herein.

9. Claims 17, 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ballantyne et al. (5867821) in view of Aghili (6289315).

(A) Claims 17, 34 have not been amended. The claims are rejected for the same reasons given in the prior Office Action, dated 04/26/05, and incorporated herein.

10. Claims 20, 22-24, 35, 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ballantyne et al. (5867821) in view of Basso Jr. et al. (6131090).

(A) Claim 20 has been amended to recite "wherein the network is configured to sequentially control said electronic access with respect to patient's data so that at least a first predetermined entity must access the patient's data before a second predetermined entity is permitted access."

The claim is rejected for substantially the same reasons given in the previous Office Action in the rejection of the original claim 20.

With respect to the newly added limitation, Ballantyne fails to expressly recite the sequence access control (i.e. first predetermined entity must access the patient's data before a second predetermined entity is permitted access). Ballantyne, however, suggests that the access criteria can be set in accordance to the users' qualifications, status, as well as their necessity to gain access to medical information. Ballantyne, col. 8, lines 24-27. In addition, Basso Jr. et al. teaches the concept of prior access and access sequence number to identify each access session. Basso Jr. et al., col. 9, lines 44-46, col. 14, lines 42-49.

It would have been obvious to one having ordinary skill in the art at the time of the invention to apply the concept of sequence or prior access into Ballantyne et al. with the motivation of allowing appropriate staff to access the information in a timely manner. Basso, Jr. et al. col.1, lines 52-55, Ballantyne et al. col. 8, lines 25-27.

(B) The amendment to claim 22 has not change the scope of the claim nor the manner in which the examiner interpreted the claims and/or applied art rejection. Claim 22 is rejected for the same reasons given in the previous Office Action, dated 04/26/05, and incorporated herein.

(C) Claims 23-24, 35, 36 have not been amended. The claims are rejected for the same reasons given in the prior Office Action, dated 04/26/05, and incorporated herein.

Response to Arguments

10. Applicant's arguments filed 08/10/2005 have been fully considered but they are not persuasive. Applicant's arguments will be addressed herein below:

(A) On pages 11-12,14-16,18 of the Remarks, Applicants repeat the arguments that the Office Action fail to state a *prima facie* case of anticipation. Applicants argues that the PDA of Ballantyne et al. communicate with the PCS, but the PCS is not a patient monitoring device, and that the PCS is not a handheld mobile file unit. As such, none of the references teach "a handheld mobile field device configured to provide wireless communication with a plurality of patient medical monitoring device". Examiner disagree for the following reasons:

1) Claim 1 and the dependent claims broadly recite a "handheld mobile device configured to provide wireless communication with a plurality of patient medical monitoring devices". The examiner interprets "configured to" as capable of and the wireless communication as directly or indirect wireless communication. Ballantyne clearly teaches the handheld mobile device(s) wirelessly communicate with the PCS which either internally or externally include the patient monitoring devices. Ballantynre,

col. 11, lines 18-21, col. 12, lines 35-37. As such, the handheld mobile device of Ballantyne is capable to provide indirect wireless communication with the monitoring devices incorporated within the PCS.

2) Claim 1 and the dependent claims recite the hand held device capable (i.e. configured to) of providing wireless communication. The handheld device disclosed by Ballantyne is capable of communicating with the PCS which internally or externally include the monitoring devices via wireless communication. As such, it is unclear how is it necessarily different between the structure of the handheld device recited by the Applicant and that of disclosed in Ballantyne.

(B) On pages 13 of the Remarks, Applicants argues that the pump 400 is not a monitor like monitor transmitter 100. In response, it is respectfully that claim 9 of the present application broadly recite used for "self-monitoring". Causey II et al clearly discloses this function with the PDA having at least a medical device having sensor for self-monitoring. See the description of the PDA 10 and medical device 200 in Figs 4,5.

(C) On page 13 of the Remarks, with respect to Maes, applicants argues that "in the absence of unexpired digital certificate, however, the selected card information will not be written to the smart card notwithstanding that the user may have passed local biometric verification". In response, it is respectfully submitted that the Applicants argument is misleading. The claims 14,15, 32,33 recite biometric security comprises fingerprint recognition, and biometric security using fingerprint is well known as evidenced by Maes on col. 5, lines 54-60, col. 23, lines 17-22.

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(D) On pages 15-17, Applicants argue claims 12, 18, 25. It is respectfully submitted Ballentyne teaches the network recited in claims 12, 18, 25 as discussed in the rejections of claims 12, 18, 25 in the prior Office Action, dated 04/26/05, and incorporated herein. The Applicants arguments regarding the PCS, the medical monitoring devices and the PDA are addressed above in section A of the Response to Arguments.

(E) On page 16 of the Remark, with respect to claim 18, Applicants argue that Wolff discloses a system for document verification and tracking and has nothing to do with the limitation "a network including at least one mobile field device configured to provide communication with a plurality of patient medical monitoring devices". In response, Applicants are directed to the rejection of claim 18 set forth in the Office Action, dated 04/26/05, and incorporated herein. Wolff is combined to show that "prescription order processing system" is well known in the healthcare industry. Ballantyne and Maes are analogous art. An artisan would have found it obvious to seek the teaching of a prescription order processing system disclosed in Wolff to enhance and complete the network including at least one mobile field device configured to provide communication with a plurality of patient medical monitoring devices and the pharmaceutical databases disclosed in Ballantyne with the motivation of expanding the applicability of the system to various users. Wolff et al. col. 5, lines 4-30. In response to the applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references.

See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

(G) On pages 17-18 of the Remarks, Applicants argues that "The Office has recognized that Ballantyne et al. has failed to teach the recited claimed limitations with reference to Claims 1,5,12,18, 20 and 25. Given the defects of Ballantyne et al., the Office has sought to combine that reference with Basso et al." In response, Applicants are directed to the Office Action, dated 04/26/05, and incorporated herein. Ballantyne et al. and Basso are combined for the rejections of claims 21-24, 35, 36 and not of claims 1,5, 12,18, 20 and 25.

In addition, with respect to the applicants arguments that claimed limitation requires that "a first predetermined entity must access the patient's data before a second predetermined entity is permitted access". It is respectfully submitted that Basso et al. teaches the concept of sequence or prior access as discussed in the rejections of claims 21-24,35, 36 in the prior Office Action, dated 04/26/05, and incorporated herein. Basso clearly teaches on col. 9, lines 44-46 and col. 14, lines 42-49 that the sequence or prior access control allows the head of emergency medical service has an immediate access before other personal is permitted access.

(H) On page 18 of the Remarks. Applicants argues that Aghili et al. fails to disclose mobile field device configured to provide communication with a plurality of patient monitoring devices. In response to the applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642

F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Aghili et al. is combined to show that it is well known to include pathology results information. See the rejections of claims 17,34 in the prior Office Action, dated 04/26/05 and incorporated herein. There is no need for Aghili et al. to disclose "mobile field device configured to provide communication with a plurality of patient monitoring devices"; such limitation is taught by Ballantyne as set forth in the rejection of independent claims 12 and 25.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. "System for acquiring bedside medical data" (2002/0147390); "Mobile Clinical information system" (2005/0192845); "Interactive healthcare services" (2003/0028399).

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kim T. Bui whose telephone number is 571-272-6768. The examiner can normally be reached on Monday-Friday from 8:30A.M. to 5:00P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas can be reached on 571-272-6776. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


KTB

10/27/05.


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